

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

JAMES A. EVANS,

Case No. 1:15-cv-161

Plaintiff,

Black, J.

vs.

Bowman, M.J.

GARTH FRI, et al.,

Defendants.

**REPORT AND RECOMMENDATION**

This civil action is now before the Court on Plaintiff's pro se motion "To Discontinue Progress of the Complaint" and Defendants response thereto. (Doc. 41). Upon review of Plaintiff's motion, it appears that Plaintiff is requesting to voluntarily dismiss his complaint pursuant to Rule 41 of the Federal Rules of Civil Procedure. Rule 41 of the Federal Rules of Civil Procedure provides in part as follows:

[A]n action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Fed.R. Civ. P. 41(a)(1).

Here, Plaintiff's seeks to discontinue this action, and, as no answer or motion has been filed by Defendants, the conditions of Rule 41(a)(1) have been met.

**IT IS THEREFORE RECOMMENDED THAT** Plaintiff's motion to discontinue be **CONSTRUED** as a notice of voluntary dismissal under Fed.R.Civ.P. 41(a)(1); and that this case be **DISMISSED WITHOUT PREJUDICE.**

s/ Stephanie K. Bowman  
Stephanie K. Bowman  
United States Magistrate Judge

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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).